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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,215	01/23/2004	Boon Peng Chew	P142M	9145
27752 7590 05/03/2011 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER VAKILL, ZOHREH				
ART UNIT 1629		PAPER NUMBER		
MAIL DATE 05/03/2011		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/764,215	Applicant(s) CHEW ET AL.
Examiner ZOHREH VAKILI	Art Unit 1629

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 04 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 January 2011. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4 and 6-9.
Claim(s) withdrawn from consideration: 10-17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Zohreh Vakili/
Examiner, Art Unit 1629

/James D Anderson/
Primary Examiner, Art Unit 1629

Continuation of 11, does NOT place the application in condition for allowance because:

Applicants argue that Hayek alone cannot support a prima facie case of obviousness because Hayek alone does not disclose, teach, or suggest a nutritionally balanced pet food composition that comprises astaxanthin. Hayek discloses providing a process for feeding a companion animal such as a dog or a cat a diet containing an effective amount of beta-carotene to enhance immune response and improve the overall health of the animal. See Column 1, lines 45-49. Hayek does mention in its Background that astaxanthin is a carotenoid. See Column 1, lines 16-19. Hayek states carotenoids are absorbed in varying degrees by different species and are known to play a role in modulating the immune system and enhancing the health of the species. See Column 1, lines 16-26. However, Hayek fails to disclose a pet food composition comprising astaxanthin. It states in this Background section that these carotenoids are absorbed by varying species. It does not state dogs or cats. It does not state incorporated astaxanthin into pet food compositions. It then continues its disclosure by stating its invention related to beta-carotene. It fails to disclose any pet food composition comprising astaxanthin.

Applicant's arguments are not persuasive; Applicant is reminded that this is an obviousness rejection not anticipation. The rejection does not indicate that it anticipates, in fact it says it would have been obvious to incorporate one carotenoids for another, wherein the amount of carotenoid used in this case beta-carotene overlaps with the amount of astaxanthin, a carotenoid of the instant claimed invention.

Applicant argues Hayek does not mention in its Background that astaxanthin is a carotenoid. Applicant's attention is directed to col. 1, lines 17-19, where it indicates common carotenoids include beta-carotene, lycopene, lutein, zeaxanthin, and astaxanthin. Applicant also argues Hayek states in this Background section that these carotenoids are absorbed by varying species. It does not state dogs or cats. It does not state incorporated astaxanthin into pet food compositions.

Examiner is not persuaded by such argument; Applicant is again reminded this rejection is an obviousness rejection not anticipation. Hayek in its Background section clearly discloses a pet food supplement for enhancing immune response and improving overall health of companion animals such as cats and dogs which includes beneficial amounts of beta-carotene in the animal's diet and as discussed above two of these common carotenoids are astaxanthin and beta-carotene. These beta-carotene one of the common carotenoids are used in the pet food supplement for the same purpose as the astaxanthin used in the composition of the instant claimed invention. Applicant has not provided any factual data that how four known carotenoids would behave differently from each other in a composition to be used as a nutritionally balanced pet food. Applicant has not provided any factual data that one carotenoid can not be predictably replaced by another carotenoid, for example, astaxanthin being replaced by beta-carotene and vice versa. The composition of the prior art teaches the use of beta-carotene in a pet food supplement and further teaches there are four other carotenoids that can be used which one of them is astaxanthin. Applicant's amendments and remarks have been carefully considered in their entirety, but fail to be persuasive in establishing error in the propriety of the present rejection..

/Zohreh Vakili/
Examiner, Art Unit 1629